



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Robert C. Vidaver, M.D.
Decision and Order**

On July 18, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Robert C. Vidaver, M.D. (hereinafter, Respondent), of Henniker, New Hampshire. GX 2. The Show Cause Order proposed the revocation of Respondent's Certificate of Registration on the ground that Respondent is "currently without authority to handle controlled substances in the State of New Hampshire," the State in which he is registered. GX 2, at 2 (citing 21 U.S.C. § 824(a)(3)).

As to the Agency's jurisdiction, the Show Cause Order alleged that Respondent holds DEA Certificate of Registration No. FV0660565, which authorizes him to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 304 Highland Drive, Henniker, New Hampshire 03242. GX 2, at 1. *See also* GX 1 (Certification of Registration History). The Show Cause Order alleged that this registration expires on May 31, 2019. GX 2, at 1. *See also* GX 1, at 1.

As the substantive ground for the proceeding, the Show Cause Order alleged that Respondent is "without authority to handle controlled substances in the State of New Hampshire, the state in which ... [he is] registered with DEA." GX 2, at 1. It further alleged that, "[o]n July 2, 2015, the New Hampshire Board of Medicine issued an Order on Practice Restrictions prohibiting ... [Respondent] from prescribing or administering controlled substances ... [and t]hus, ... [Respondent is] currently without authority to handle controlled substances in the State

of New Hampshire.” GX 2, at 1. *See also* GX 3 (New Hampshire Board of Medicine Order on Practice Restrictions (hereinafter, Practice Restrictions Order)) and GX 6 (New Hampshire Online Licensing information concerning Respondent) (“7/2/15 – Order on Practice Restrictions. License is active pending further Board Action.”). The Show Cause Order asserted that “DEA must revoke ... [his] DEA registration based on ... [his] lack of authority to handle controlled substances in the State of New Hampshire.” GX 2, at 1-2 (citing 21 U.S.C. § 824(a)(3) and 21 CFR 1301.37(b)).

The Show Cause Order notified Respondent of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. GX 2, at 2 (citing 21 CFR 1301.43). The Show Cause Order also notified Respondent of the opportunity to submit a corrective action plan. GX 2, at 2 (citing 21 U.S.C. § 824(c)(2)(C)).

On July 27, 2017, a DEA Diversion Investigator personally served Respondent with the Show Cause Order. GX 4, at 1 (Declaration of Service of Order to Show Cause dated October 3, 2017).

By letter dated August 17, 2017 addressed to the Office of the [DEA] Administrative Law Judges and copied to Respondent, James P. O’Rourke, Jr., Esq., advised that “upon advice of counsel, Dr. Vidaver is exercising his right against self-incrimination pursuant to the New Hampshire and United States Constitution ... [and a]s such, Dr. Vidaver will not be appearing at the September 12, 2017 hearing nor offering a statement regarding the instant Order to Show Cause.” GX 5, at 1 (Letter of James P. O’Rourke, Jr., Esq.) (emphasis in original).

On October 12, 2017, the Government submitted a Request for Final Agency Action including an evidentiary record to support the Show Cause Order's allegation (hereinafter, RFAA).

I find that the Government's service of the Show Cause Order on Respondent was legally sufficient.

I find that the letter from Mr. O'Rourke stated that Respondent was exercising his Federal and State Constitutional rights against self-incrimination and, therefore, will not appear at a hearing or file a written statement. Based on the letter from Respondent's counsel, I find that Respondent has waived his right to request a hearing, to submit a written statement, and to submit a corrective action plan.

I issue this Decision and Order based on the record submitted by the Government. 21 CFR 1301.43(e).

FINDINGS OF FACT

Respondent's DEA Registration

Respondent currently holds DEA practitioner registration FV0660565 authorizing him to dispense controlled substances in schedules II through V at the address of 304 Highland Drive, Henniker, New Hampshire 03242. GX 1, at 1; GX 2, at 1. This registration expires on May 31, 2019. *Id.*

The Status of Respondent's Authority to Dispense Controlled Substances in New Hampshire

On July 2, 2015, the Administrator and Authorized Representative of the New Hampshire Board of Medicine signed a Practice Restrictions Order granting Respondent's request to continue the Adjudicatory/Disciplinary Proceeding hearing concerning him "until the resolution

of ... [Respondent's] criminal case.” GX 3, at 2. The terms of the Practice Restrictions Order continuance included that Respondent “will refrain from prescribing or administering any controlled substances.” *Id.* The Government represented in the RFAA that “Respondent’s New Hampshire medical license prohibits him from prescribing or administering controlled substances” and “Registrant is without state authority to handle controlled substances in New Hampshire, the state where he is registered with DEA.” RFAA, at 3.

Accordingly, I find that Respondent currently is without authority to prescribe or administer any controlled substance in New Hampshire, the State in which he is registered with DEA.

DISCUSSION

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA), “upon a finding that the registrant ... has had his State License or registration suspended [or] revoked by competent State authority and is no longer authorized by State law to engage in the ... dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371, 71,371-72 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “‘practitioner’ [to] mean[] a physician ... or other person licensed, registered, or otherwise permitted, by ... the jurisdiction in which he practices ... to distribute, dispense, ... [or]

administer ... a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners ... if the applicant is authorized to dispense ... controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess State authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices. *See, e.g., Hooper*, 76 FR at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts*, 53 FR 11,919, 11,920 (1988); *Blanton*, 43 FR at 27,617.

In this case, the New Hampshire Board of Medicine ordered practice restrictions on Respondent when it granted Respondent’s request for a continuance of the licensee disciplinary proceedings against him. The New Hampshire Board of Medicine Practice Restrictions Order granted the continuance Respondent requested “to the extent” that Respondent “refrain[s] from prescribing or administering any controlled substances.” GX 3, at 2.

Consequently, Respondent is not currently authorized to handle controlled substances in the State of New Hampshire, the State in which he is registered with the Agency and, therefore, he is not entitled to maintain his DEA registration. *Hooper*, 76 FR at 71,371-72; *Blanton*, 43 FR at 27,617. Accordingly, I will order that Respondent’s registration be revoked and that any pending application for the renewal or modification of his registration be denied. 21 U.S.C. § 824(a)(3), *id.* § 823(f).

ORDER

Pursuant to the authority vested in me by 21 U.S.C. § 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration FV0660565 issued to Robert C. Vidaver, M.D., be, and it hereby is, revoked. Pursuant to the authority vested in me by 21 U.S.C. § 823(f), as well as 28 CFR 0.100(b), I further order that any pending application of Robert C. Vidaver, M.D., to renew or modify this registration, as well as any other pending application by him for registration in the State of New Hampshire, be, and it hereby is, denied. This order is effective [insert Date Thirty Days From the Date of Publication in the Federal Register.].

Dated: February 6, 2018.

Robert W. Patterson,
Acting Administrator.

[FR Doc. 2018-03303 Filed: 2/16/2018 8:45 am; Publication Date: 2/20/2018]